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OFFICE OF PETITIONS

In re Patent No.: RE39,543 :
Issue Date: 3 April, 2007 :
Application No. 08/977,644 : DECISION
Filed: 24 November, 1997 :
Attorney Docket No. 67702-5002 / 04-US :

This is a decision on the petition, filed on 10 June, 2008, properly considered as a request under 37 C.F.R. §1.377 to accept and record a maintenance fee for the above-identified patent.

The petition is **GRANTED**, and the third maintenance fee and surcharge are accepted pursuant to the tender on 14 March, 2008 (*see*: Notice of Non-Acceptance).

The instant patent issued as a reissue on 3 April, 2007, with the original issue date of the underlying patent (No. 5,536,501) on 16 July, 1996.

The third maintenance fee could have been paid with surcharge from 17 January, 2008, through 16 July, 2008, and the record (*inter alia*, a copy of the submission and of the Notice of Non-Acceptance) evidences that payment was timely tendered by Petitioner and received by the Office, and thereafter the Office failed to consider the submission in the context of the 4 November, 2005, decision granting acceptance of an unintentionally delayed payment of the maintenance fee as to Patent No. 5,536,501.

This, it appears that the Office failed to accept and credit properly the fee to the instant patent.

Petitioner has adequately demonstrated that the Office may accept and record the third maintenance fee payment for the above-noted patent pursuant to 37 C.F.R. §1.377.

Accordingly, the petition under 37 C.F.R. §1.377 is **granted**; the petition fee is waived *sua sponte*—and it appears that it was not charged. Should Petitioner later find that it was charged, Petitioner may file with the Office of Finance a request for refund with a copy of this decision.

This file is being returned to the IFW Files Repository.

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Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2¹) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).



/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

¹ The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.